

Notice of Allowability

Application No.

10/717,288

Examiner

H. T. Le

Applicant(s)

ADAMS ET AL

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed April 28, 2005.
2. ☒ The allowed claim(s) is/are 1-271.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

H. T. Le
Primary Examiner
Art Unit: 1773

REASONS FOR ALLOWANCE

1. The following is an examiner's statement of reasons for allowance:

None of the prior art references teach or suggest a water-dispersible nanoparticle, or a conjugate of the nanoparticle and an affinity molecule, comprising the specific amphipathic polymer in an outer layer and an oxyalkylene linker binding the amphipathic polymer to a functional group as claimed. The Bawendi patent (US 6,319,426) does not teach an oxyalkylene linker. In addition, the Bawendi patent does not teach a multiply amphipathic polymer according to the instant invention. The polymer taught by Bawendi does not contain at least two hydrophobic regions and at least two hydrophilic regions within the same polymer as required in the instant claims. Rather Bawendi teaches a molecule that contains one linker, one hydrophobic region that terminates with a hydrophilic group to provide water solubility to the particle. See col. 7, lines 10-15.

The Terminal Disclaimers filed December 2, 2004 have overcome the double patenting rejections applied against the Patent No. 6,649,138 and copending application 10/716,971.

Response to Applicants' Remarks

2. Though deeply puzzled, the examiner sincerely regrets that her recitation of facts was perceived as an implication of irresponsibility on Applicant's Representative, especially when the failure to respond was due to the Representative's illness. The examiner simply explained why the previous office action contained just a minor rejection that could have been resolved with a quick phone call. The examiner's fact statement may not have been

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versed to deserve the Representative's approval, but it was not written out of "frustration", "irritation" or meant to "blame" as insinuated in the Representative's remarks. Honestly, upon re-reading it, the examiner still cannot see anything personal about what was written. In addition, the examiner notices that the office action was mailed on February 25, and the end of quarter (second quarter) was March 26, which was one month away from the mailing date. So it's quite bewildering to the examiner that Applicant's Representative mentioned "frustration" and "under pressure" during the "last days of the end of quarter".

The examiner would like to note with appreciation that an associate from the office of the Representative of record, Mr. Mark Warzel, contacted the examiner, as an alternative representative, trying to resolve the issues during the period when the Representative of record was unavailable (due to illness). However, nothing was accomplished because it was one day after the office action had been completed and sent to the supporting staff for mailing.

3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to H. T. Le whose telephone number is 571-272-1511. The examiner can normally be reached on 10:00 a.m. to 6:30 p.m., Mondays to Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



H. T. Le
Primary Examiner
Art Unit 1773

June 21, 2005.